M. ARULANDAN

v.

MALAYSIAN CO-OPERATIVE INSURANCE SOCIETY LTD.

SUPREME COURT, KUALA LUMPUR
WAN SULEIMAN SCJ
GEORGE SEAH SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 85 OF 1985]
27 OCTOBER 1986

CIVIL PROCEDURE: *Originating summons - Whether the learned Judge was right to strike it out - On ground that it was an abuse of the process of the Court - For failure to comply with the provision contained in s. 49(1) of Co-operative Societies Act 1948 - "any dispute touching the business of a registered society" - Interpretation - Domestic remedies - Whether appeal should be allowed.*

The appellant had been employed by the respondent ("the Co-operative Society") since 1962. In 1979 he applied to be a member of the Co-operative Society and his application was accepted. In 1983 while he was holding the post of Manager of the Organisation and Methods Department the management of the Co-operative Society decided that his salary increment for that year be barred pursuant to a disciplinary action. Being aggrieved with that decision he took step to appeal to the Board of Directors.

In 1984 he brought an originating summons in the High Court at Kuala Lumpur asking for a declaration that the purported disciplinary action against him was null and void and of no effect, and prayed for an order that his increment be restored. The Co-operative Society filed a summons-in-chambers under O. 18 r. 19 of the Rules of the High Court for an order to strike out the appellant's originating summons on a number of grounds. One of the grounds was that the appellant was a member of the Co-operative Society and also an officer within the definition of "officer" in s. 2 of the Co-operative Societies Act 1948 ("the Act"), and therefore the dispute brought by the appellant should have been referred to the Registrar-General of Co-operative Societies for his decision pursuant to s. 49(1) of the Act. It seemed that this ground found favour with the learned Judge, and he made an order to strike out the originating summons. Hence this appeal.

Held:

[1] The appellant was an officer of the Co-operative Society at the relevant time, as the evidence showed that the nature of his job as Manager of the Organisation and Methods Department of the Co-operative Society was such that he gave directions in regard to the business of the Co-operative Society.

[2] The words "touching the business of a registered society" must be given their full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word "touching" it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. *(Madhava Rao v. Surya Rao).*

[3] On the appellant's contention that in view of By-law 37A of the Co-operative Society's By-laws the Board of Directors ("the Board") had no jurisdiction to appoint Encik Shah Abu Mansor as the Chief Executive superior in status and authority to the General Manager, the list contained in By-law 37A of officers who can be appointed was by no means exhaustive.

Nowhere was it provided that they are the only officers who can be appointed. Encik Shah was a member of the Board appointed as the Chief Executive, and therefore he was an executive member of the Board. Being a member of the Board he was superior in status to the General Manager who was not a member of the Board.

[4] On the appellant's contention that the General Manager was the only disciplinary authority constituted by the Staff Regulations and the institution of the board of inquiry by the Chief Executive was in contravention of the Staff Regulations, and that this issue was not an issue which should be referred to the Registrar-General under s. 49(1), their Lordships were of the view that the dispute as to whether the actions taken by the Chief Executive were in contravention of the Staff Regulations was a domestic dispute relating to administration within the Co-operative Society and it was a dispute which should have been referred to the Registrar-General under s. 49(1).

[5] Since the appellant was the aggrieved party the reference should have been made by him. Under s. 49(2) of the Act, the Registrar-General, on receipt of such reference, may require the parties concerned to refer the dispute to Court. So the appellant may bring an action in the Court only if the Registrar-General required the dispute to be referred to the Court.

[6] It is a condition precedent that domestic remedies must be exhausted before resorting to the Court.

[Appeal dismissed with costs. Appellant at liberty within a reasonable time to refer to the Registrar-General only the issue whether the institution of the Board of Inquiry and the disciplinary action taken against him were in contravention of Staff Regulations.]

Cases referred to:
Madhava Rao v. Surya Rao [1954] AIR Madras 103
Heard v. Pickthorne [1913] 3 KB 299
Tharmalingam v. Sambanthan [1961] 27 MLJ 63
Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors. [1983] 1 MLJ 412

Legislation referred to:
Co-operative Societies Act 1948, ss. 2, 49(1), 49(2), (6), 50, 51
Co-operative Societies Rules 1949, rr. 2, 10B, 25(1)
Rules of the High Court 1980, O. 18 r. 19

For the appellant - M.S. Murthi M/s. Murthi & Partners
For the respondent - Vincent Chandran (Dennis Xavier with him) M/s. Dennis Xavier & Co.

JUDGMENT

Wan Hamzah SCJ:

The appellant, M. Arulandan, has been employed by the respondent, Malaysian Co-operative Insurance Society Limited (the Co-operative Society), since 1962. In 1979 he applied to be a member of the Co-operative Society and his application was accepted. In 1983 while he was holding the post of Manager of the Organisation and Methods Department the management of the Co-operative Society decided that his salary increment for that year be barred pursuant to a disciplinary action. Being aggrieved with that decision he took step to appeal to the Board of Directors. Later, i.e., in 1984, he brought an originating summons in the High Court at Kuala Lumpur asking for a declaration that the purported disciplinary action against him was null and void and of no effect, and he prayed for an order that his increment be restored. He alleged that the Board of Inquiry who investigated the allegations against him on 14 January 1983 had been constituted improperly and *ultra vires* the Staff Regulations and

lacked jurisdiction on the ground that the Board was instituted by the Chief Executive. He contended that upon the true construction of By-law 37A of the Co-operative Society's By-laws and reg. 2(n) of the Staff Regulations the Board of the Co-operative Society have no jurisdiction to appoint any person superior in status or authority to the officer holding the office of General Manager, and thus the appointment by the Board of the Co-operative Society on 1 July 1981 of Encik Shah Abu Mansor as the Chief Executive superior in status and authority to the General Manager was *ultra vires* the By-laws and null and void and of no effect, and therefore the institution of the Board of Inquiry by the Chief Executive was also null and void, and this rendered the disciplinary action void. It was further contended by the appellant that the officer holding the office of General Manager was pursuant to reg. 8 of the Staff Regulations the lawfully constituted disciplinary authority of all the employees of the Co-operative Society.

The Co-operative Society filed a summons-in-chambers under O. 18 r. 19 of the Rules of the High Court for an order to strike out the appellant's originating summons on a number of grounds. One of the grounds was that the appellant was a member of the Co-operative Society and also an officer within the definition of "officer" in s. 2 of the Co-operative Societies Act 1948, and therefore the dispute brought by the Appellant should have been referred to the Registrar-General of Co-operative Societies for his decision pursuant to s. 49(1) of the Act, the relevant parts of which read as follows:

If any dispute touching the business of a registered society arises-

(a) ...

(b) between a member and the society;

(c) between the society or its Board and any officer of the society;

(d) ...

such dispute shall be referred to the Registrar-General for decision.

It seems that this ground found favour with the learned Judge, and he made an order to strike out the originating summons. Hence this appeal.

We are satisfied that the appellant has been a member of the Co-operative Society at the relevant time. It is stated in the affidavit filed on behalf of the Co-operative Society that he has been a member, and he has not denied this in affidavit. We are also satisfied that the Appellant has been an officer of the Co-operative Society at the relevant time. Section 2 of the Co-operative Societies Act contains the following definition:

> "officer" means a Chairman, Secretary, Treasurer and any other member of a Board and includes any other person empowered by the rules or by-laws to give directions in regard to the business of the registered society.

Evidence shows that the nature of his job as Manager of the Organisation and Methods Department of the Co-operative Society is such that he gives directions in regard to the business of the Co-operative Society.

The case of *Madhava Rao v. Surya Rao* [1954] AIR Madras 103 dealt with the meaning of the words "touching the business of a society" which appeared in certain parts of the Madras Co-operative Societies Act. Those words also appeared in a section which is in *pari materia* with s. 49(1) of the Co-operative Societies Act of Malaysia. In that case it was held -

> The words "touching the business of a society" must be given their full import, bearing in mind the object of the legislation. Taking the dictionary meaning of the word "touching" it indicates that the dispute need not directly arise out of the business of the society, but that it is enough that it should have reference or relation to or concern the business of the society. The word "touching" was clearly not intended to restrict the meaning of the word business; it was designed to enlarge its scope. Similarly, the word "business" is not used in a narrow sense.

We now revert to the appellant's contention which we have mentioned earlier, i.e., the contention that in view of By-law 37A the Board have no jurisdiction to appoint Encik Shah Abu Mansor as the Chief Executive superior in status and authority to the General Manager. We would like to point out that the list contained in By-law 37A of officers who can be appointed is by no means exhaustive. Nowhere is it provided that they are the only officers who can be appointed. In fact the Co-operative Societies Rules 1949 contemplate the appointment of an executive member of the Board. In r. 2 "executive member of the Board" is defined to mean any person who is appointed as full-time member of the Board of a registered society and is concerned with day-to-day administration and management of the affairs and business of that registered society. Rule 10B contains provisions relating to an executive member of the Board of a registered society. Encik Shah Abu Mansor was a member of the Board appointed as the Chief Executive, and therefore he was an executive member of the Board. The fact that he was called the Chief Executive did not change the position that he was an executive member of the Board. Being a member of the Board he was superior in status to the General Manager who was not a member of the Board. Therefore it is not correct to say that the Board had no jurisdiction to appoint him as the Chief Executive superior in status to the General Manager. Although under Staff reg. 2(n) "General Manager" is defined to mean the Principal Officer of the Co-operative Society, the Staff Regulations should be read subject to the Co-operative Societies Rules 1949, which have been made pursuant to powers given by s. 51 of the Co-operative Societies Act 1948. The question whether the appointment of Encik Shah Abu Mansor as the Chief Executive was null and void for lack of jurisdiction is a question for the Court to decide as it involves the consideration of the statutory provisions. But the matter does not rest there. There is still another issue arising from the contention of the appellant that the General Manager was the only disciplinary authority constituted by the Staff Regulations and the institution of the board of inquiry by the Chief Executive was in contravention of the Staff Regulations. It is contended by the Appellant that this issue is not an issue which should be referred to the Registrar-General under s. 49(1). For this contention reliance is placed on the authority of *Heard v. Pickthorne* [1913] 3 KB 299. In this case an approved society under the National Insurance Act passed a resolution that in every instance an insured member claiming sickness benefit must send a certificate from a panel doctor. The plaintiff was refused sickness benefit for failure to comply with that resolution. It was held by the Court of Appeal that the matter was not one of domestic administration which under the National Insurance Act ought to go to arbitration, and that the plaintiff was entitled to the declaration sought by him that the resolution was illegal and *ultra vires.* Per Bray J:

> It was quite clear that the resolution they passed was a very great restriction on (the rule which) provided that he should be entitled to sickness benefit, if a medical certificate or other sufficient evidence of incapacity and the cause thereof were produced. The resolution provides that there shall be neither of those two alternatives, but a medical certificate from a particular class of doctors. That is a matter which it seems to me is not internal administration, but a

> matter of vital importance, as improperly restricting the rights of insured persons. That being so it seems to me that we have jurisdiction to decide this question, and, once we have arrived at that conclusion, there cannot be a doubt that it follows from that that this resolution was illegal.

In the present case the question does not arise whether the Chief Executive's actions were illegal or whether he had committed a breach of statutory provisions, but it was alleged that the actions taken by him were in contravention of the Staff Regulations. It was not shown by the appellant that the Staff Regulations have been made as statutory regulations. It was not shown that they have been made under the powers given by s. 51 of the Co-operative Societies Act to make rules. It appears that they have been made for the purpose of internal administration of the Co-operative Society. They have probably been made by or under the authority of the Board. Therefore any thing done or omitted to be done in contravention of the Staff Regulations would not be an illegality or a breach of statutory provisions. At the most the Staff Regulations can be taken as terms of contract between the Co-operative Society and its staff. Therefore the dispute as to whether the actions taken by the Chief Executive were in contravention of the Staff Regulations is a domestic dispute relating to administration within the Co-operative Society and it is a dispute which should be referred to the Registrar-General under s. 49(1). The facts in *Heard's* case are distinguishable from the facts of this case. Rule 25(1) of the Co-operative Societies Rules 1949 provides-

> Reference of a dispute to the Registrar-General under sub-section (1) of s. 49 of the Act may be made by the Committee, or by the society by resolution in general meeting, or by any party to the dispute, or, if the dispute concerns a sum due from a member of the Committee to the society, by any member of the society.

Since the appellant is the aggrieved party the reference should have been made by him. Under s. 49(2) of the Co-operative Societies Act the Registrar-General, on receipt of such reference, may require the parties concerned to refer the dispute to Court. So the appellant may bring an action in the Court only if the Registrar-General required the dispute to be referred to the Court. We would like to refer also to s. 50 in which it is provided that the Registrar-General at any time when proceeding to a decision may refer any question of law arising out of such decision for the opinion of the High Court.

There are a number of Malaysian decided cases in which it was ruled that domestic remedies must be exhausted. We need to refer only to the case of *Tharmalingam v. Sambanthan* [1961] 27 MLJ 63. In that case the appellant who was an ordinary member of the Malayan Indian Congress asked for a declaration that his suspension from membership under Article 28 of the constitution of the Malayan Indian Congress was null and void. It was held by the Court of Appeal that it was a condition precedent that the appellant should resort to the domestic remedies provided in the constitution before resorting to the Court.

The appeal is dismissed with costs here and in the High Court. The deposit should be paid to the respondent on account of the taxed costs. The appellant should have the liberty within a reasonable time to refer to the Registrar-General only the issue whether the institution of the Board of Inquiry and the disciplinary action taken against him were in contravention of the Staff Regulations. As already stated the issue relating to the appointment of the Chief Executive superior in status and authority to the General Manager is an issue for the Court to decide, and we have already disposed of that issue and given the answer.

George Seah SCJ:

The material facts of this appeal have been set out by my learned brother, Tan Sri Datuk Wan Hamzah and I need not repeat them. Suffice for me to say that in my opinion, the only question to be determined in this appeal is whether the learned Judge was right to strike out the Originating Summons on the ground that it was an abuse of the process of the Court in that the appellant had failed to comply with the provision contained in s. 49(1) of the Co-operative Societies Act 1948. To answer this question I have to consider how the phrase "any dispute touching the business of a registered society" is to be interpreted. In *Heard v. Pickthorne* [1913] 3 KB 299 @ 313 Bray J formulated this test:

> The learned Judge, I think, put the right question to himself, as to whether this was such an illegal act as the Courts will interfere with and restrain, notwithstanding the arbitration provision; or whether it was a mere matter of internal administration.

Hashim Yeop Sani J (as he then was) appeared to have adopted it in construing s. 49(1) of the Act in the case of *Professor Dr. A. Kahar Bador & Ors. v. N. Krishnan & Ors.* [1983] 1 MLJ 412 @ 414. The appellant in this case has challenged the legality of the appointment of Encik Shah Abu Mansor as Chief Executive superior in status and authority to the General Manager by the Board of the respondent. He also questioned the power of the Chief Executive to hold disciplinary action against him. In short, the Originating Summons asked the Court to rule on the legality of the appointment as well as the proceedings taken by the Chief Executive. There was no doubt that a dispute existed between the appellant and the respondent. But the vital question to be decided is whether this is a dispute touching the business of the respondent? If the answer is in the negative then s. 49(1) of the Act has no application and there is no necessity to refer the dispute to the Registrar-General of Co-operative Societies for his decision.

In my opinion, any action which questions the legality of any appointment or disciplinary proceedings of a society registered under the Co-operative Societies Act 1948 does not come within the purview of the phrase "any dispute touching the business of a registered society" if the test propounded by Bray J in *Heard v. Pickthorne* (*supra*) is to be applied. Such a construction would seem to accord with s. 49(2)(c) of the Act which provides that "The Registrar-General may, on receipt of a reference under subsection(1) require the parties concerned to refer the dispute to a Court".

Since the learned Judge struck out the originating summons on the mistaken belief that s. 49(1) of the Co-operative Societies Act 1948 applied when it did not, I would set aside his order and allow the appeal with costs here and below.

Also found at [1987] 1 CLJ 43